remained, and not as to all houses to be subsequently constructed, as held by the lower court. *Welch* v. *Austin et al.* (1905), — Mass. —, 72 N. E. Rep. 972.

Unless the intention clearly appear to make restrictions permanent, courts tend to treat them as applicable solely to existing conditions, and hence enforceable only as to the building then to be erected. *Boston Baptist Social Union* v. *Trustees of Boston University,* 183 Mass. 202. But when such stipulation in a deed is made for the benefit of the vendor's remaining land, as in the principal case, it is held enforceable by a subsequent grantee of the vendor. *Hemsley* v. *Marlborough Hotel Co.,* 62 N. J. Eq. 164. And so long as the beneficial enjoyment of the estate so conveyed, is not materially impaired by restrictions and conditions as to the mode of its use, they will be held valid. *Wakefield* v. *Van Tassell,* 202 Ill. 41. This is true, although restrictions upon the use of property by a grantee in fee are not favored in the law. *Ewertsen* v. *Gerstenberg,* 186 Ill. 344, 349. Courts are largely influenced in their attitude toward building restrictions, by a change in the character of the neighborhood. See 95 Am. St. Rep. (note) 221.

DEEDS—RULE IN SHELLEY'S CASE.—A deed to plaintiffs' mother, deceased, contained the following: "I, etc., do hereby convey as a free gift, said gift being in value $5,000, to B., my daughter, during her natural life, and at her death to her children, or to their lineal descendents," (the land in controversy). By B.'s will, all her real estate was given to the plaintiffs, her children and heirs at law, while to the defendants, her remaining children, she gave small legacies in full of their share in her estate. In this action to quiet title, plaintiffs contended that, by the application of the rule in Shelley's Case, B. took a fee simple estate under the foregoing grant. Defendants argued that, even if the rule was in force in Iowa, this case was not one for its application. *Held,* that the facts did not present a case for the application of the rule. The use of the word, "heirs," was essential; "children," as here used being rather a word of purchase than limitation, in accordance with the grantor's apparent intention. *Brown et al.* v. *Brown et al.* (1904), — Iowa —, 101 N. W. Rep. 81.

What appears of interest is the statement of the Chief Justice, who wrote the opinion, that, "Whether or not the rule in Shelley's Case is in force in this state is a question upon which the members of this court are not agreed." The misunderstanding upon this question seems to have arisen from the case of *Pierson et al.* v. *Lane,* 60 Ia. 60. This, however, is only authority for the statement that the statute De Donis is of no force in Iowa, and accordingly a grant to, "P. and the heirs of her body begotten, etc.," was construed to vest in P. a fee simple estate upon the birth of issue, a conditional fee having been thereby created. And we find the Pierson case given controlling effect in *Broliar* v. *Marquis,* 80 Ia. 49, 51, wherein the court says of that case that, "the rule in Shelley's Case was applied." But subsequent decisions seem to question the existence of the rule in Iowa. *Zavity* v. *Preston,* 96 Ia. 52. The latest adjudication involving the application of the rule, prior to the principal case, appears in *Wescott et al.* v. *Binford et al.,* 104 Ia. 645. But the court

here refuses to commit itself upon the existence of the rule in Iowa, although it does say, "Two cases have been decided by this court in which the rule was applied" (page 650). Upon the whole, it does not appear that any decision can be found in Iowa wherein the rule was strictly applied and its binding force recognized, prior to the case of *Doyle* v. *Andis,* 102 N. W. Rep. 177, commented on ante p. 393.

EQUITY-MISTAKE OF FACT-NEGLIGENCE.—The defendant conveyed certain premises to the plaintiff who held a mortgage thereon, representing that otherwise the land was unencumbered. The plaintiff, after examining part of the records and finding no further encumbrance, discharged the mortgage. There was in fact a judgment lien duly recorded in the records not examined by him. In a suit to reinstate the mortgage on the ground of mistake of fact, *Held,* that the plaintiff was not entitled to equitable relief. *Farrell* v. *Bouck* (1904), — Neb. —, 101 N. W. Rep. 1018.

If a mistake of fact is material to the transaction wherein it occurs and does not result from the party's own violation of some legal duty, equity will, in the absence of adequate remedy at law, relieve from the consequences thereof either affirmatively or defensively. 2 POMEROY'S EQ. JUR., Sec. 852; *Fairbank* v. *Town of Rockingham,* 73 Vt. 124, 50 Atl. Rep. 802; *Barker* v. *Fitzgerald,* 105 Ill. App. 536, 68 N. E. Rep. 430; *MacKay* v. *Smith,* 27 Wash. 442, 67 Pac. Rep. 982. Mutual mistake or mistake of one party caused by the fraud of the other forms a basis for equitable relief. *Wilcox* v. *Lucas,* 121 Mass. 21, *Long* v. *Hartwell,* 34 N. J. L. 116; *North etc. Ry. Co.* v. *Swann,* 105 Pa. St. 555. It is sometimes stated that equity will not interfere if the complainant has been negligent. STORY'S EQ. JUR., Secs. 146, 147; SNELL'S EQUITY, 434; *Keith* v. *Brewster,* 114 Ga. 176, 181, 39 S. E. Rep. 850. Yet not every act of negligence will bar the door of the court. 2 POMEROY'S EQ. JUR., Sec. 856; *Kinney* v. *Ensminger,* 87 Ala. 340; *Bush* v. *Bush,* 33 Kan. 556; *Snyder* v. *Ives,* 42 Iowa 157, 162; *Emmert* v. *Thompson,* 49 Minn. 386, 52 N. W. Rep. 31. Thus it has been held that infirmity or gross ignorance will be a sufficient excuse for negligence. *Banta* v. *Vreeland,* 15 N. J. Eq. 103; *Schaffner* v. *Schilling,* 6 Mo. App. 42. It has been intimated that personal inquiry concerning a matter of public record constitutes sufficient diligence. *Conner* v. *Welch,* 51 Wis. 431, 442, 8 N. W. Rep. 260, 264. But the holding in the principal case is directly opposed to this and is, it seems, entirely reasonable.

EVIDENCE—PHOTOGRAPH—X-RAY.—Plaintiff, in an action for damages for personal injuries, offered in evidence a skiograph, or X-ray picture, for the purpose of showing that plaintiff's heart had been displaced, that the walls of the organ had become thick, and that an abnormally heavy tissue had formed on the walls of the heart. Over the objection of the defendant the skiograph was admitted in evidence and delivered to the jury for examination. *Held,* no error. *Chicago & J. Electric R. Co.* v. *Spence* (1904), — Ill. —, 72 N. E. Rep. 796.

Photographs are generally recognized as a permissible mode of testimony